

Board of Selectmen
Meeting Minutes
October 29, 2007

Present:

Sue Clough, Chair, Board of Selectmen
Mark Kaplan, Selectman
Jessie Levine, Town Administrator

Absent: Larry Ballin, Selectman

Others present:

Kate Miller, Esq., Donahue, Tucker & Ciandella, Town Counsel for franchise negotiation
Lisa Birmingham – Comcast Representative
Richard Cavallaro, New London resident
Burton Jones, New London resident
Howard McCollum, New London resident
Frank Bodurtha, New London resident
Barbara Kreisler, New London property owner
Lori Underwood, New London Hospital
David Foss, New London Hospital
Greg Uhrin, Yankee Communications
Phil Stake – Argus Champion

1. Public Hearing – Ascertainment of Future Cable Related Needs and Interests

Ms. Clough opened the hearing at 6:30 PM and announced that the Comcast representative, Lisa Birmingham, would be late due to car trouble.

Chair Clough introduced Kate Miller, Town Counsel from Donahue, Tucker & Ciandella, who explained that the purpose of tonight's hearing is to build a record for the town's renewal negotiations with Comcast for the cable franchise. The Town is gathering information on the future cable related needs and interests of the community with regard to possibly expanding access programming, and other ways of using the cable system that might be helpful for the town in terms of municipal uses, school systems and businesses. It can become a very important component of the town's telecommunications infrastructure for emergency management. Some communities use cable for providing information in the event of a disaster. The Board of Selectmen does not have jurisdiction over everything that Comcast does; its limit is the cable franchise. For example, high-speed internet is not regulated by the cable franchise agreement, the same for telephones. Town Counsel will be working with the Board of Selectmen in developing a new franchise agreement that would hold open as much as possible the opportunity for a competitor to come in and offer an alternative video service either through cable or something a little bit more innovative such as Verizon or FairPoint's proposal to do it over telephone lines. The internet is a separate process, but that's providing some competition to companies such as Comcast who are accustomed to providing cable service in essentially monopolistic settings.

Ms. Miller opened the floor for questions and comments.

Barbara Kreisler asked who FairPoint is, and Kate Miller replied that FairPoint is the company proposing to purchase the land lines for the telephones in New Hampshire, Maine and Vermont. Verizon is selling its land lines including the fiber that is put out in some of the southern communities. Verizon would like to transfer everything to FairPoint. At this time the Public Utilities Commission is holding hearings for

the transfer. Ms. Kreisler asked if the purchase would impact Verizon's intention of installing some sort of broadband (not DSL). Ms. Miller explained that the cable system essentially operates like a monopoly; there is not much competition from other cable operators. Nobody is likely to come out and build a second cable system in a community that already has a cable system, and in some communities the cable company does not go out to all the homes. Comcast has unfortunately been pulling back in recent years from how far it is willing to go and what it considers to be an economically viable density build-out for the cable system. Ms. Kreisler said she thought that was the purpose of these negotiations, and Ms. Miller responded that our goal is to have an agreement that would at least keep the door open for competition. Comcast would prefer an agreement that is as narrow as possible and would be beneficial to them and not to a competitor. There are laws in New Hampshire and at the federal level that prevent an exclusive franchise.

Ms. Kreisler asked if New London would have access to franchise agreements made in other towns, and Ms. Miller responded in the affirmative. Her firm has represented 15-20 towns in franchise negotiations over the last 5 years and has a specialty in telecommunications. She has seen a definite trend away from providing grants for access programming and more generous density definitions for building-out the cable system in all parts of the community. There used to be more support for local access programming with studios or technicians, but Comcast has been trimming back across the board. One community was in a very bitter, on-running cable franchise negotiation where the cable operator changed three times, and each time the new operator that came in was bigger, less responsive to the community and offered less in negotiations. By the time it came to the third operator, the community was in a much worse position than in the beginning of the negotiations. Again, the goal here is to have an agreement that would protect the town as much as possible and allow for insulation from changes in the law. There are some rumbles in Congress to do away with municipal franchising for cable agreements altogether. The goal is to find out what the town is interested in having in the way of access stations, locations that would provide for live programming, departments in the town may have ideas of ways to use the cable system. In general, Comcast provides courtesy services to municipalities and schools and usually free internet service to schools and libraries. Ms. Miller recommended a compliance audit to make sure that all of the things Comcast is suppose to be doing with the existing agreement are being done now.

Ms. Clough asked if the courtesy service applies to public or private schools, and Ms. Miller replied that generally the policy is public schools. She noted that it is tricky for the Board of Selectmen to negotiate for private schools. There are many communities in which Comcast does provide services to some private schools, primarily parochial schools. Comcast does not provide courtesy services to universities or colleges. Mr. Kaplan asked what Colby-Sawyer College currently does, and Ms. Levine said that she believes the College negotiated a package arrangement with Comcast for cable television and has a separate agreement with another vendor for internet service. Ms. Levine said the town has free cable connection from Comcast but pays for the internet.

Dick Cavallaro asked Ms. Miller if her invitation for comment applies only to the Comcast arrangement or does it include generally what the community would be looking for. Ms. Miller said that it is in the context of the Comcast franchise renewal, but added that it could include a broader vision in terms what would be good for the community. Mr. Cavallaro said that he has a much broader vision, in reference to the regional fiber optic project. Ms. Levine explained that eight towns in the Upper Valley, including New London, have been working together on a fiber optic project, the goal being to string our own fiber network that would then be open for general use by any service provider, whether it is an internet service provider, video, telephone, tele-medicine or things that haven't even been thought of. It's primarily an economic development tool and it arose out of some other towns in the area that have no access to cable or internet at all. New London's interest comes at it more from economic development and service perspectives: what can we provide the community that the community can then use as a building block for

itself? The Town would not offer any kind of service on its own other than municipal services such as the Town website. The Town would not be in the business of offering cable, telephone or internet; we just want to build the road that would allow commerce to take place.

Ms. Kreisler said that is just the kind of thing that would solve her problem. She lives at Owl's Nest, where there are about five homes that cannot get cable due to the density issue. She has Direct TV, it's the internet that's the problem. Howard McCollum said that so far up to this point cable television has been a convenience for most. If he wants to watch the Patriots game and the system goes down, he may scream and yell but life goes on. But as we proceed down the information highway, some of these things go from "nice to have" to "necessities" where people get used to them. They start getting used in some way for medical services, for the police, fire, rescue. He said that Comcast needs to pay some attention to reliability of service. Ms. Miller asked Mr. McCollum if he had any issues with reliability, and he said that his system has come down a couple of times, and he has to say they have been reasonably responsive. He said that it's going to be very difficult in the practical way to separate cable from internet, and he hopes the Town gets the fiber network. He envisions using the internet for things like medical uses: the hospital can send things out in an emergency to doctors, huge files with x-rays, etc. Mr. McCollum said somebody has to pay attention to the capacity of the network; that may not relate to the cable negotiations, but it needs to be in the back of your mind. Ms. Miller agreed and added that our jurisdiction is limited in terms of what we can insist on, but on a macro level, she asked if we are not relying too much on certain pipelines for information.

Mr. McCollum asked how the Town could bring in competition, which led Burt Jones to ask who owned the poles in New London. Ms. Miller said she believes they are jointly owned, and Ms. Levine added that it's a combination of TDS, PSNH and then Verizon in part of the town. Comcast does not own the poles. Mr. Jones said that's an issue that has to be addressed no matter what happens [with the franchise negotiation]. He added that Wall Street does not think Comcast is financially strong to be doing this 21st century stuff. Ms. Miller agreed that there is speculation that this is the reason why Comcast is trying to eliminate rate regulation, which they are doing in New London and about 150 other New Hampshire towns. The elimination of rate regulation would enable Comcast to borrow more by saying to their lenders that they are no longer subject to minimum rate regulations and can raise rates. Ms. Miller said that she does not know if that's an indication that they are weak or that they plan on growing, but Comcast has recently filed a rash of petitions with the Federal Communications Commission to eliminate the very modest amount of rate regulation that the FCC currently exercises over basic tier cable services only. Ms. Miller asked if Mr. Jones was concerned about safety issues in terms of the amount of wires already mounted on the poles, and Mr. Jones replied that he is concerned about downstream issues.

Ms. Levine asked Ms. Miller to update the audience on the pole attachment docket at the Public Utilities Commission. Ms. Miller said that previously, attachment issues were regulated by the FCC in Washington, which is not a terribly responsive entity to New London or other small New Hampshire communities. Currently before the PUC is a docket looking at pole issues because Verizon was shockingly unresponsive to safety and construction issues. The PUC acquired jurisdiction over pole attachments, so now there is a much more local entity that is getting very educated on issues having to do with attachments and attachment problems.

Mr. Jones said the in-home telemedicine is in the category of "got to have it." We can't build enough hospitals to take care of the demographic that's developing, which is an issue that seems prudent to open up for discussion whether it's with fiber or whatever.

At approximately 6:50 PM, Lisa Birmingham from Comcast arrived.

Ms. Kreisler asked about the length of the franchise agreement. Ms. Miller said that is a topic of negotiation. Ms. Levine said that the previous contract was for 10-years. It started with Casco Cable Vision, went to Frontier Vision and then to Adelphia before becoming Comcast. Ms. Kreisler said that she hopes it won't be ten years again.

Philip Stake, reporter with the Argus Champion, asked what a municipal franchise is. Ms. Miller said that cable law is set up at the federal level so that municipalities, the Board of Selectmen or city council, are the authority in the community that negotiates a franchise agreement with the cable company. The reason for that is the fact that the municipality controls the public right-of-way, the streets, shoulders, etc., that are traveled and adjacent to the traveled way, and therefore they have jurisdiction over all the facilities in the right-of-way. The municipalities provide licenses to the pole owners to put up poles for power and telephone and they also authorize a cable company to go into the right-of-way to attach to those poles and conduct other activities. The cable company has to negotiate with the pole owners -- usually the electric and telephone companies -- for the right to attach to the poles. But the right to get into the public right-of-way and provide a service, essentially through a system that reaches most of the residents in the community along the public right-of-way, is granted through the cable franchise agreement.

Frank Bodurtha asked if Comcast would have a vacation/seasonal rate similar to what Adelphia used to have, in lieu of Comcast's current practice of disconnecting service entirely. He also asked whether the Town has input on selection of the TV programs that Comcast or any other would put on. Ms. Miller replied that there is something called the "basic tier" that cable companies are required to provide, which includes what would be the over the air broadcast stations as well as a local access station. Beyond that the town is allowed to request certain categories of programming -- sports, news, children's programming -- but the town does not have jurisdiction under the law over specific programs themselves. Ms. Levine asked if the Town could ask for *a la carte* programming, or ask Comcast to make programming available piece meal rather than in large chunks.

Lisa Birmingham of Comcast said that Comcast does like to hear opinions but one community cannot design a particular programming schedule package because the New London community and the Sunapee community has pretty much the same line ups out of our Lebanon office, and Comcast must carry certain channels and certain broadcasts. She believes that New London is actually in the Burlington, Vermont/Plattsburg designated market area, but Comcast tries to carry Boston channels because most people here have roots or connections to Boston. She said that Comcast needs to hear from our customers so it can develop appropriate packages, but on a franchise negotiation basis Comcast does not negotiate channels. Ms. Birmingham said that Comcast is considering a change in the seasonal policy, which is something it can share with the Select Board.

Mr. McCollum asked what would happen in February of 2009 when analog broadcasting will be shut off. Ms. Birmingham explained that Congress mandated a transition from analog to digital broadcasting, since the FCC wants to recapture the spectrum that's being used in the analog space to auction it off and for public safety and homeland security reasons. For New London constituents who have no cable or satellite and only an analog TV, they will not receive anything as of February 10th, 2009. If the subscriber has cable, Comcast's analog customers will be fine because Comcast is going to convert the signal. She went on to say that the issue Comcast is working on now in addition to education and outreach is the additional outlets; Comcast for the most part allows additional outlets at no charge so we want to make sure that your additional outlet is set up so that every TV gets the signal. Cable customers generally speaking should be fine. Congress has set aside some funds for education and awareness and also coupons, although she is not sure what the coupons are going for.

Mr. Jones said that he would like some consideration in the dialog about *a la carte* programming. It's an issue that I think needs to be addressed as a negotiating tool. Ms. Kreisler said that she cannot get cable in New London; here we've been talking about uses for medical information and the analog issue, and she can't get cable because Comcast will not bring it to us. She said she has been trying for a lot of years, but there seems to be some disagreement in interpreting the current contract and the density in one-mile issue. She said she has her attorney looking into it and someday enough of us are going to stand up and be counted – she said that it would be nice if Comcast did something about it so she wouldn't all have to go to that trouble.

Ms. Birmingham explained that there is a provision in the franchise agreement regarding density, and it sounds like Ms. Kreisler is in a situation in which the Town and Comcast have to manage expectations appropriately. At 18 homes per mile [which is the density requirement in the franchise agreement], that's just not 18 driveways. She asked how close Ms. Kreisler's house is to the public rights-of-way, because her experience in northern New England is that people are more than 250 feet from the road or the pole line (she demonstrated with a drawing on the white board). The density requirement is 18 homes per mile, and Comcast will go out and survey. People assume that if there are 18 driveways within a mile, then that meets density. The issue is the strand mile, not the road mile.

Ms. Kreisler said that Adelpia came out about two years ago, and she said that we're talking about a few outliers with a need for this service that needs to be considered by the Town in negotiating and by Comcast. She added that most of the outliers are people that only live here part of the year; they don't get a lot of services from the Town, so it would be nice if the Town went to bat for them as much as possible on this issue where they can help us. She said that people are not going to stand for this.

Ms. Birmingham responded that there are three types of build-out with four options. The first type is what is called "mandatory line extension" within the context of the franchise agreement, 18 homes per mile within the standard drop (the standard drop in the agreement is 250 feet). Typically the customer pays for the incremental installation beyond the standard drop. She added that Comcast tries to encourage developers to put in extra conduit, now that so many people are going underground. The second way is called "contribution in construction," based on a provision in the franchise agreement where if a street does not meet the density, Comcast will ask how it can share the risk. It costs \$23K-\$25K a mile to install cable, and at a certain point there is a diminishing return. The third way, "business as usual" in new developments, it makes sense to negotiate with the developer. The fourth way is, because of the demand for broadband and knowing that it doesn't meet density, the Town could be willing to share the risk of extending service.

Ms. Kreisler asked if the Town could only choose one option, and Ms. Levine said she would like to see all four be written into the franchise agreement. Mr. Kaplan said that at one time in franchise history, the Town had the right to insist upon 100% wiring of the town. He asked Ms. Miller whether or not we still have that right as a negotiating point, and Ms. Miller said that it is a tough thing to require. Mr. Kaplan asked if it is legal or illegal to insist upon it, and Ms. Miller replied that if Comcast believes the town is making unreasonable demands it can refuse to accept them and impose what's called a "formal agreement" on the town.

Ms. Levine clarified that the last time the franchise was negotiated, the agreement had a specific list of eight roads that would be included in a build-out; it was not 100% of everything in town. Mr. Kaplan agreed and said that it was part of an earlier franchise agreement, and Casco felt it was terribly unfair and when the Town agreed with them during the renegotiations in 1996.

Ms. Miller said that her firm generally recommends an audit when towns are going through a renewal negotiation to see where the problems are and figure out if there are specific roads that could be covered, because often there are ways of addressing specific situations. Comcast would be unlikely to agree to 100% because they are worried about someone located way out in the woods.

Ms. Birmingham said that Comcast provides an as-built strand map that shows where the line is currently built. If the Town has 911 data, that's extremely helpful to lay over because then you can see who's unserved and approximately where they are in proximity to the pole line. Ms. Miller agreed that would be productive, and she recommended that the Board of Selectmen encourage the Planning Board to establish subdivision regulations that would require notification to Comcast that there's going to be trenching.

David Foss, Senior Information Technology Director at New London Hospital, said that from a hospital perspective, he would like to see full density. The ability for our patients to have access to broadband, whether through the cable network or DSL, would provide the patients of our organization access to their medical information whether it be telemedicine, tele-health monitoring of patients through a VNA relationship, or giving access to electronic health records. It's getting broadband out to every home within the area served by Comcast. As far as local need, Mr. Foss said that access to better programming at lower cost is always a good thing. The Hospital is not a large consumer for cable TV services from a programming perspective, so it comes back to broadband capabilities. He would like to explore using the cable network for point-to-point toning protocol to allow the Hospital to reach out to homes or for business-to-business and use that medium for that type of traffic. There should also discussion around static IP addresses so that the Hospital could have equipment out at remote sites or so home transcriptionists could work from their homes.

Ms. Miller reminded those present that the Selectmen only have jurisdiction over the cable. Lori Underwood of New London Hospital said that in the future, the Hospital would like to use the cable access network to communicate from the perspective of emergency management but that comes down to people having access to it. The Hospital serves 15 communities and would like to start by covering the community it lives in. She referred to the ice storm of 1998 and how the cable system was used to communicate. She added that it also comes back to the reliability that was brought up earlier; if there's an ice storm and we're all out cable does not help. From an emergency management perspective, communication through that portal may be a good option. Emergency management is a collaboration of the Hospital, ambulance service, and the Town through police and fire and dispatch. There's a real team approach that happens that could be easily communicated through those venues and to other communities as well.

Mr. McCollum asked about the cost to go underground, and Ms. Birmingham said it could easily double the cost of stringing on poles.

Greg Uhrin of Yankee Communications pointed out that the current agreement has language that allows commercial messages to be attached to local programming. He said that in other communities Comcast has been aggressive about eliminating that ability and as a result, Andover is no longer seeing the Game of the Week and some of the local programs that are provided in these areas. Ms. Birmingham said that as a matter of federal law, the current franchise agreement allows the access channel to be used for commercial leased programming as well as PEG programming, and PEG programming itself by definition is non-commercial. Ms. Miller said that the practices in many small communities in New Hampshire pre-date some of those current definitions.

Mr. Uhrin said that if a community this size uses 100% of the franchise fee to provide programming, the amount of programming that could be provided would never come anywhere near what exists because of

the allowance of commercial messages. Ms. Birmingham said the paid programming and operation cannot be commercial but that doesn't mean Comcast is opposed to underwriting as WGBH/VPR, so we can certainly work to that in the franchise agreement. She added that federal law is federal law; it cannot be commercial.

Ms. Levine asked if there has been any challenge other than the conversation between the municipality and the provider; has the question of commercial activity been brought to federal review. Ms. Miller said that it is somewhat in the eye of the beholder in terms of what is commercial in advertisement versus sponsorship or underwriting. Ms. Levine asked if to some extent Comcast would benefit from excluding commercial activity on local access because it would want the commercial business on other channels. Doesn't Comcast have a stake in not allowing commercial activity on the public access? Ms. Miller said she is not aware of a court challenge in New Hampshire, where most of the communities are doing straight forward public access.

Ms. Birmingham said there is a leased access program required by the federal law which means someone from the community can come in and say I want to lease a channel from you and that can be commercial. Mr. Uhrin said he finds it interesting watching UNH Wildcats hockey on Channel 11 now; what goes on there looks a lot like commercial advertising. He asked who becomes the arbiter of what is and what isn't commercial, because he's run into situations where there is no call to action. Ms. Birmingham agreed that it almost seems there's more gray than black and white, and said it is an area that Comcast can work on.

Mr. Uhrin said he believes it's for the community to decide whether they want it or not want it. Ms. Levine said that under the current model in New London, where all of our local access programming is being done privately even though it's over the public access, the lack of commercial activity would end the public access as we know it because the Town does not have the ability for use of the PEG channels right now. It's important to New London because this would end the one avenue for public access that we're using, and the franchise fee would not even get New London start-up costs at this point, let alone operating costs. New London has no live feeds either for the governmental or the educational uses, and has no studio or staff.

Mike Meller said the Town should have the opportunity for some kind of live feed in emergencies when the power goes out, and *a la carte* programming to cut out all the channels I never watch.

Ms. Miller said that the record will remain open until December 15, 2007, and concerned citizens and members of the community can submit their input to Ms. Levine. The franchise agreement expires on February 9, 2008, and Ms. Miller explained that once the Town has generated a record Comcast will make a proposal for renewal taking into consideration some of the items in the record from the community. The agreement that Comcast will propose will look different from the current agreement, which was done by another company at another time, and then the town will negotiate. Services will continue under the existing agreement until a new agreement is reached.

Ms. Birmingham explained that since Comcast acquired Adelphia, video services were upgraded, a number of high definition channels were added, and video on demand service has been upgraded. Comcast has launched digital voice which competes with Verizon, TDS and FairPoint throughout Vermont and New Hampshire. Comcast has not been able to launch in this community, and negotiations are in process with TDS. Current proposals start at \$99 for digital television, high speed data broadband and voice service. Comcast is hoping the town will support their entry into the market, as it's important to have choice. Also Comcast has recently launched Comcast Work Place, the market of which will be the small and medium business with video voice and data.

There being no further comment, the public hearing was closed.

2. Messer Pond Protective Association

The Select Board was presented with a letter from the Messer Pond Protective Association requesting up to \$2,000 for assistance with the MPPA's watershed evaluation. No action taken at this time.

3. Tax Rate

The tax rate has been set at \$13.47; the town rate went from \$3.94 to \$3.80.

4. Roundabout Pre-Bid

The pre-bid meeting was held this afternoon for bidders to come and meet with the engineers. About 8 vendors attended but there are at least 10 vendors who have purchased plans to bid for the project. Bids are due November 14, 2007.

5. Groundwater Management Zone - Boundary Relocation

Ms. Levine referred to a letter she sent to Sumner Woodward regarding the groundwater management zone relocation saying the Town is willing to work on relocation at Mr. Woodward's expense. She has not heard back from Mr. Woodward at this point.

6. Budget Committee Report

Mr. Kaplan reported that there was a long discussion about the non-profit organizations. COA is asking for \$20,000 for a second year, and the Budget Committee has some concern about that request.

In regards to salaries, Ms. Levine is meeting with Local Government Center about the wage study salary ranges. The Selectmen discussed the method by which they would recommend a different budget from the Budget Committee, if necessary. Mr. Kaplan recommends meeting with Budget Committee to reach consensus.

7. Other Business

Ms. Levine asked the Select board if FEMA money could be applied to offset the Highway Department budget. The money will be used to grind asphalt and complete shimming work that was postponed due to the storm damage.

8. Tuition Reimbursement

Reimbursement was approved by the Select board.

Building Permits

- Daniela & Jonathan Mellen, 600 Hall Farm Road, (tax map: 087-009-000); adding a 16x35 2-room addition – Approved (Permit # 07-134)

Building Permit Amendments or Extensions

- Application for Extension for Sonja Ann Philips, 752 Pleasant Street, (tax map: 049-005-000); after corrected professional measurement would allow construction as originally planned for new bedroom – Approved (Permit # 07-001)

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Other Items for Signature

- Disbursement voucher week of 10/29/07 – Approved
- Sewer Betterment, Job Seamans Acres, Property Tax 2nd Levy, (\$6,105.00)
- Sewer Betterment, Edmunds Road, Property Tax 2nd Levy, (\$7,400.00)
- Solid Waste Transportation Service contract between Town of New London & Dan Clark Transportation - Approved

Applications for Signatures

- Application for use of Whipple Memorial Town Hall, by American Legion Post 40, for Armistice Day Program, Sunday November 11th, 2007 – 10:00 a.m. – 11:30 a.m. - Approved

Sign Permits

NONE

Respectfully submitted,

Mary Whalen
Recording Secretary